

HOUSE BILL 1026

P2

11r2335

By: **Delegate Krebs**

Introduced and read first time: February 11, 2011

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Finance and Procurement – Prevailing Wage Rates – Oversight**

3 FOR the purpose of changing the name of the “Advisory Council on Prevailing Wage
4 Rates” to be the “Advisory and Oversight Council on Prevailing Wage Rates”;
5 requiring the Advisory and Oversight Council periodically to review, and
6 approve or deny, prevailing wage rates determined by the Division of Labor and
7 Industry; establishing that certain determinations of prevailing wage rates are
8 subject to review, and approval or denial, by the Advisory and Oversight
9 Council; requiring a certain annual report submitted by the Division to include
10 a description of each review, and approval or denial, of prevailing wage rates
11 performed or issued by the Advisory and Oversight Council; requiring the
12 publishers of the Annotated Code of Maryland, in consultation with and subject
13 to the approval of the Department of Legislative Services, to replace certain
14 references in the Code to the “Advisory Council on Prevailing Wage Rates” with
15 references to the “Advisory and Oversight Council on Prevailing Wage Rates”
16 and to describe any such corrections in an editor’s note in the Code; and
17 generally relating to oversight in the process of determining prevailing wage
18 rates.

19 BY repealing and reenacting, with amendments,
20 Article – Business Regulation
21 Section 2–108(a)(34)
22 Annotated Code of Maryland
23 (2010 Replacement Volume and 2010 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – State Finance and Procurement
26 Section 17–201(a), (c), and (h)
27 Annotated Code of Maryland
28 (2009 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – State Finance and Procurement
3 Section 17–203, 17–204(b), 17–208(a), 17–209(a), 17–211, and 17–212
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2010 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – State Government
8 Section 8–403(b)(54)
9 Annotated Code of Maryland
10 (2009 Replacement Volume and 2010 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – Business Regulation**

14 2–108.

15 (a) The following units are in the Department:

16 (34) the Advisory **AND OVERSIGHT** Council on Prevailing Wage Rates.

17 **Article – State Finance and Procurement**

18 17–201.

19 (a) In this subtitle, unless the context indicates otherwise, the following
20 words have the meanings indicated.

21 (c) “Commissioner” means:

22 (1) the Commissioner of Labor and Industry;

23 (2) the Deputy Commissioner of Labor and Industry; or

24 (3) an authorized representative of the Commissioner.

25 (h) “Prevailing wage rate” means the hourly rate of wages paid in the locality
26 as determined by the Commissioner under § 17–208 of this subtitle.

27 17–203.

28 (a) In this section, “Advisory **AND OVERSIGHT** Council” means the Advisory
29 **AND OVERSIGHT** Council on Prevailing Wage Rates.

1 (b) There is an Advisory **AND OVERSIGHT** Council on Prevailing Wage
2 Rates in the Division of Labor and Industry.

3 (c) The Advisory **AND OVERSIGHT** Council consists of the following 6
4 members:

5 (1) 2 individuals from management in the building and construction
6 industry;

7 (2) 2 individuals from labor in the building and construction industry;
8 and

9 (3) 2 individuals from the general public.

10 (d) (1) The Governor shall appoint each member with the advice of the
11 Secretary of Labor, Licensing, and Regulation and with the advice and consent of the
12 Senate.

13 (2) The 2 members from management shall be selected from a list
14 submitted by management organizations in the building and construction industry.

15 (3) The 2 members from labor shall be selected from a list submitted
16 by labor organizations in the building and construction industry.

17 (e) Before taking office, each appointee to the Advisory **AND OVERSIGHT**
18 Council shall take the oath required by Article I, § 9 of the Maryland Constitution.

19 (f) (1) From among the Advisory **AND OVERSIGHT** Council members, the
20 Governor shall appoint a chairman.

21 (2) The chairman of the Advisory **AND OVERSIGHT** Council:

22 (i) shall serve for 1 year from the day of appointment; and

23 (ii) is not eligible for reappointment as chairman for the
24 following year.

25 (g) (1) The term of a member is 3 years.

26 (2) The terms of members are staggered as required by the terms
27 provided for members of the Advisory **AND OVERSIGHT** Council on October 1, 1988.

28 (3) At the end of a term, a member continues to serve until a successor
29 is appointed and qualifies.

30 (4) If a vacancy occurs, the Governor shall appoint a new member with
31 the advice of the Secretary of Labor, Licensing, and Regulation.

1 (5) A member who is appointed after a term has begun serves only for
2 the rest of the term and until a successor is appointed and qualifies.

3 (h) The Governor may remove a member for incompetence or misconduct.

4 (i) (1) The Advisory **AND OVERSIGHT** Council shall:

5 **(I)** advise and submit recommendations to the Commissioner on
6 the Commissioner's functions under this subtitle; **AND**

7 **(II)** **AT LEAST ANNUALLY, REVIEW AND APPROVE OR DENY**
8 **PREVAILING WAGE RATES DETERMINED BY THE COMMISSIONER UNDER THIS**
9 **SUBTITLE.**

10 (2) The Commissioner may ask other units of the State government or
11 units of local governments to provide statistical data, reports, and other information to
12 help the Advisory **AND OVERSIGHT** Council to carry out its duties.

13 (j) The Advisory **AND OVERSIGHT** Council shall meet at least twice a year
14 and on other days the Commissioner requests, at the times and places that it
15 determines.

16 (k) Each member of the Advisory **AND OVERSIGHT** Council is entitled to:

17 (1) compensation in accordance with the State budget; and

18 (2) reimbursement for expenses under the Standard State Travel
19 Regulations, as provided in the State budget.

20 (l) Subject to the evaluation and reestablishment provisions of the Maryland
21 Program Evaluation Act, this section shall terminate and be of no effect after July 1,
22 2014.

23 17–204.

24 (b) On or before January 1 of each year, the Commissioner shall submit to
25 the Governor and to the Secretary of Labor, Licensing, and Regulation an annual
26 report that:

27 (1) describes the activities of the Commissioner under this subtitle
28 during the preceding calendar year; and

29 (2) includes:

1 (i) each recommendation received from the Advisory AND
2 **OVERSIGHT** Council on Prevailing Wage Rates during the preceding calendar year;

3 (ii) **A DESCRIPTION OF EACH REVIEW, AND APPROVAL OR**
4 **DENIAL, OF PREVAILING WAGE RATES PERFORMED OR ISSUED BY THE**
5 **ADVISORY AND OVERSIGHT COUNCIL ON PREVAILING WAGE RATES;**

6 (iii) full information about the operation of this subtitle; and

7 [(iii)] (iv) other information about prevailing wage rates, as the
8 Commissioner desires.

9 17–208.

10 (a) (1) (i) For each public work to which this subtitle applies, the
11 Commissioner shall determine the prevailing wage rate for each classification of
12 worker engaged in work of the same or a similar character.

13 [(2)] (ii) The Commissioner shall determine the prevailing wage
14 rates for both straight time and overtime.

15 [(3)] (iii) These determinations shall be made in accordance with:

16 [(i)] 1. the applicable provisions of Title 10, Subtitles 1
17 through 3 of the State Government Article; and

18 [(ii)] 2. to the extent not inconsistent with those provisions,
19 the requirements of this section.

20 (2) **A PREVAILING WAGE RATE DETERMINED UNDER THIS**
21 **SECTION IS SUBJECT TO REVIEW, AND APPROVAL OR DENIAL, BY THE ADVISORY**
22 **AND OVERSIGHT COUNCIL ON PREVAILING WAGE RATES.**

23 17–209.

24 (a) (1) One time per year, the Commissioner shall determine the
25 prevailing wage rate for a classification of worker in a locality by considering among
26 other things:

27 [(1)] (i) any other payroll information relevant to the determination;
28 and

29 [(2)] (ii) wage rates established by collective bargaining agreements.

1 **(2) A PREVAILING WAGE RATE DETERMINED UNDER THIS**
2 **SECTION IS SUBJECT TO REVIEW, AND APPROVAL OR DENIAL, BY THE ADVISORY**
3 **AND OVERSIGHT COUNCIL ON PREVAILING WAGE RATES.**

4 17–211.

5 (a) A determination of a prevailing wage rate issued under § 17–209 of this
6 subtitle is subject to review when a public body publishes a call for bids or proposals in
7 which the determination is used for the first time following its issuance under §
8 17–209 of this subtitle.

9 (b) (1) Within 10 days after a public body publishes any call for bids or
10 proposals, as described in subsection (a) of this section, a petition for review of a
11 determination of a prevailing wage rate may be submitted to the Commissioner by:

12 (i) the public body;

13 (ii) a prospective bidder or offeror or a representative of a
14 prospective bidder or offeror;

15 (iii) a representative of a group of employers engaged in the type
16 of construction for which the prevailing wage rate was determined; or

17 (iv) a representative of a classification of worker for which the
18 prevailing wage rate was determined.

19 (2) A petition under this subsection shall be verified and shall set
20 forth the facts on which it is based.

21 (3) If a petition is not filed within the period set under paragraph (1)
22 of this subsection, the determination is final and is the rate applicable in the locality
23 for the remainder of the 1–year period for which it was issued under § 17–209 of this
24 subtitle.

25 (c) (1) Within 2 days after a petition is submitted under this section, the
26 petitioner shall send a copy to the public body.

27 (2) On receipt of a copy of the petition, the public body shall extend the
28 closing date for bids or proposals until 5 days after the Commissioner publishes the
29 final determination under subsection (f) of this section.

30 (d) (1) Within 20 days after a petition is submitted, the Commissioner
31 shall:

32 (i) after giving the notice required under paragraph (3) of this
33 subsection, conduct an investigation; and

1 (ii) hold a public hearing to review the petition.

2 (2) If more than 1 petition is submitted, the Commissioner may
3 consolidate the hearings on any of the petitions.

4 (3) The Commissioner shall notify the petitioner, public body,
5 recognized collective bargaining representative for the classification for which a review
6 is requested, and any other person entitled to receive notice under § 17-210(b)(2) of
7 this subtitle.

8 (e) At the hearing:

9 (1) the Commissioner shall introduce as evidence the investigation
10 conducted under subsection (d) of this section and the other facts that formed the basis
11 of the Commissioner's original determination; and

12 (2) any interested party, including the Commissioner, may introduce
13 other evidence material to the issue.

14 (f) **(1) (I)** Within 10 days after the conclusion of a review hearing, the
15 Commissioner shall send to the public body and each interested party, a determination
16 of the prevailing wage rate.

17 **(II)** This determination is final and is the rate applicable in the
18 locality for the remainder of the 1-year period for which it was issued under § 17-209
19 of this subtitle.

20 **(2) A PREVAILING WAGE RATE DETERMINED UNDER THIS**
21 **SECTION IS SUBJECT TO REVIEW, AND APPROVAL OR DENIAL, BY THE ADVISORY**
22 **AND OVERSIGHT COUNCIL ON PREVAILING WAGE RATES.**

23 17-212.

24 A member of a public body may not vote for the award of a public work contract
25 or vote to disburse money for the construction of a public work unless:

26 (1) the public body has asked the Commissioner to determine the
27 prevailing wage rates in the locality for each classification of worker required to
28 perform the public work contract, **SUBJECT TO REVIEW, AND APPROVAL OR**
29 **DENIAL, BY THE ADVISORY AND OVERSIGHT COUNCIL ON PREVAILING WAGE**
30 **RATES;** and

31 (2) the determination has been made part of the specifications and
32 public work contract for the public work.

33 **Article – State Government**

1 8-403.

2 (b) Except as otherwise provided in subsection (a) of this section, on or before
3 the evaluation date for the following governmental activities or units, an evaluation
4 shall be made of the following governmental activities or units and the statutes and
5 regulations that relate to the governmental activities or units:

6 (54) Prevailing Wage Rates, Advisory **AND OVERSIGHT** Council on (§
7 17-203 of the State Finance and Procurement Article: July 1, 2013);

8 SECTION 2. AND BE IT FURTHER ENACTED, That, with no further action
9 required by the General Assembly, the publishers of the Annotated Code of Maryland,
10 in consultation with and subject to the approval of the Department of Legislative
11 Services, shall replace in the State Finance and Procurement Article and throughout
12 the Code, in a manner consistent with the changes made in Section 1 of this Act, any
13 reference to the “Advisory Council on Prevailing Wage Rates” with a reference to the
14 “Advisory and Oversight Council on Prevailing Wage Rates”, and shall adequately
15 describe any such correction in an editor’s note following the section affected.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2011.